

THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

UNITHERM FOOD SYSTEMS, INC.,)
an Illinois Corporation,)
and JENNIE-O FOODS, INC.,)
a Minnesota Corporation,)
Plaintiffs,) Case No. CIV-01-347-C
vs.)
SWIFT-ECKRICH, INC., d/b/a)
CONAGRA REFRIGERATED FOODS,)
a Delaware Corporation,)
Defendant.)

COPY

DEPOSITION OF

MICHAEL BRIGGS

Taken on behalf of the Plaintiffs on Wednesday, October 17,
2001, from 1:45 p.m. to 8:00 p.m., at Willow Brook Foods,
405 N. Jefferson, in the City of Springfield, County of
Greene, State of Missouri, before

PATRICIA L. SNIDER,

a Free-lance Court Reporter and a Notary Public within and
for the County of Greene, and State of Missouri, in a
certain cause now pending before the United States District
Court for the Western District of Oklahoma.

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EXHIBIT L

PTO-003291

1 BY MR. KROLL: Objection
2 as to form.
3 A. Yes.
4 Q. (By Mr. Castro) Now after --
5 BY MR. KROLL: Are you
6 finished?
7 Q. (By Mr. Castro) Oh, I'm sorry. Are
8 you done?
9 A. They, Unitherm -- Unitherm sold a
10 system by which we could deliver the
11 process. You know, I think it was a
12 collaborative effort by all the
13 parties. Yeah.
14 Q. Okay. After this February 28th letter,
15 which is Bates stamped 000129, did you
16 speak to Mr. Salm?
17 A. Pardon me?
18 Q. Oh, that's all right. This letter,
19 when we go to the letter --
20 A. Oh, okay. Okay. Okay.
21 Q. Did you have an opportunity to talk
22 with Mr. Salm?
23 A. You know, I think I picked up the phone
24 and did call him, and, to the best of
25 my knowledge, I called. I'm not sure

1 that I can remember, but I was very,
2 very up front with him saying, you
3 know, I have this, I've spoken to my
4 attorney, and -- and still, I'm in the
5 same vein of, you know, I don't need to
6 go looking for things to do, you know.
7 Q. All right. Now, some background
8 regarding you. You are not a patent
9 attorney, correct?
10 A. No. No.
11 Q. You're not an attorney?
12 A. No.
13 Q. You're not an engineer in any way?
14 A. No.
15 Q. Do you know what pyrolysis is?
16 A. I had never heard of the word until I
17 read the patent. I mean, I may have
18 seen it, but, you know, I know what
19 liquid smoke is and I know what a
20 browning agent is.
21 Q. Do you know what a pyrolysis browning
22 agent is?
23 A. I'm not sure I know exactly what that
24 is today. I mean, I couldn't give you
25 a definition. I assume, you know, but

1 I don't -- I mean, I didn't go look it
2 up in the dictionary and I guess --

3 Q. That's fine. Are you -- do you
4 typically as part of your job duties
5 read patents?

6 A. Typically no. This is maybe, in my 20
7 years of being in this industry, maybe
8 the second or third patent that I've
9 looked at. I mean, you know, like any
10 other legal document it takes quite a
11 bit, you know, to sit down and read a
12 patent. This is the first patent I've
13 read front to cover. I think I've
14 reviewed one or two others a long time
15 ago.

16 Q. You indicated you had two conversations
17 with Greg Castro, the first one was
18 just general to find out more
19 information, is that correct?

20 A. Yeah. Greg called me up and -- Greg
21 called and said that he represented
22 David on this particular matter, and I
23 think you also said you represented
24 Jennie-O, which, you know -- and I
25 didn't know if he represented Jennie-O

1 problem is that an impingement oven had
2 too much velocity. It would blow the
3 smoke off. And Unitherm's actually
4 used a much gentler heat, and so that's
5 what we needed was something that was
6 at lower temperatures and more gentle
7 in its air flow. And that was the
8 nice thing about the radiant flow oven,
9 there was no air flow, it just, you
10 know, it was all temperature. So we
11 needed a little air flow so we wouldn't
12 have to go to such high heat, and that
13 was -- you know, I'm sure some of these
14 other guys were more -- in my
15 conversation with Phil Weiner, which is
16 that, you know, this really had -- you
17 know, this really was a better way of
18 going.

19 Q. So is it fair to say then that the
20 reason Unitherm was contacted by Hudson
21 Foods was for the purpose of using it,
22 using Unitherm's oven?

23 A. Yes.

24 Q. Okay. Was the purpose of contacting
25 Unitherm to use it for any other part

1 of the process that was described in
2 Bates stamp number 18?
3 A. In my mind, no.
4 Q. Who first contacted Unitherm?
5 A. I don't -- I don't know. I assume it
6 was Tony.
7 Q. And do you recall when that occurred?
8 A. Oh, we were pretty hot on this. We
9 were moving. And as soon as we had a
10 thing on it, you know, because we were
11 committed, you know, so it may have
12 been 8/29. I mean, you know, it may
13 have been the day after this radiant
14 wall oven team -- it was somewhere
15 shortly after that because on September
16 19th we were making comparisons
17 between, so this is within days of this
18 8/28. We were going down the way and
19 we switched very quickly, because by
20 the 19th, which was two and a half
21 weeks later, we were already making
22 comparisons on our documentation.
23 Q. This goes actually -- this is the part
24 that I don't understand. If you go to
25 document number 11 --

1 Unitherm process, and I want to go into
2 a little more detail about what that
3 Unitherm process may or may not have
4 been. It appears that at least on
5 August 28th, 1996 or before that that
6 Unitherm was not involved in any way in
7 the radiant wall oven team's analysis,
8 is that correct?

9 A. That is correct.

10 Q. And is it also correct that Hudson
11 Foods contacted Unitherm for the
12 purpose of purchasing an oven? Is that
13 correct?

14 A. That is -- that is my understanding.

15 Q. Did Hudson Foods also contact Unitherm
16 for the purpose of purchasing a process?

17 A. No.

18 Q. The in-line process of smoking product
19 on a continuous basis, which is what
20 the radiant wall oven team was
21 interested in, the Unitherm oven would
22 only be one part of that process, is
23 that correct?

24 A. Correct.

25 Q. In your discussions with any members of

1 A. No, I do not know. I'm not sure I
2 should know, but I don't know.
3 Q. Well, do you know whether the browning
4 liquid pyrolysis product is obtained
5 from the pyrolysis of hardwoods or
6 sugars, or is that also something above
7 your knowledge?
8 A. I do not know what the pyrolysis or the
9 means of going about pyrolysis is. I
10 know what liquid smoke is, I know what
11 Maillose is, I know what caramel
12 coloring is. How they get it to there,
13 to that point, I don't know.
14 BY MR. HANOR: They
15 probably bought it off the shelf.
16 A. Yeah, it's out there. I mean, Red
17 Arrow is involved in this because
18 that's what they do.
19 Q. (By Mr. Kroll) Do you know the amount
20 of browning liquid pyrolysis product
21 that's based on the weight of the
22 precooked whole muscle meat product?
23 A. No, sir, I don't.
24 Q. Do you know if the browning liquid
25 pyrolysis product contains a masking

1 agent or a flavoring enhancing
2 composition?
3 A. No, I do not.
4 Q. Do you know if the browning liquid
5 pyrolysis product contains turkey
6 flavor or turkey broth or a mixture of
7 the two?
8 A. No, I do not.
9 Q. The oven which Hudson Foods purchased
10 from Unitherm, do you know -- here it
11 indicates oven temperatures ranging
12 from approximately 600 to 670 degrees
13 Fahrenheit. Do you see that on --
14 A. Right.
15 Q. -- I E on Bates stamp number 93?
16 A. Right. Yes, I do. I see that.
17 Q. Are you aware of the use of
18 temperatures other than the range of
19 600 to 670 degrees Fahrenheit?
20 A. Yes. We even at an early stage were
21 debating going to much lower
22 temperatures than the 600 to 670, and
23 in fact in the end moved the
24 temperatures significantly lower, not
25 only due to the fact that it was better

1 for the product but it was also better
2 for the equipment. But at this early
3 stage in the game those were the
4 temperature parameters that we were
5 using, and even at this point in time
6 there was a debate within, you know,
7 the operators and manufacturing people
8 wanted to run high temperatures and
9 fast speeds and we wanted to get better
10 quality product and move the
11 temperatures down, you know, even 100
12 degrees. And we may even be in the
13 400 degrees today because -- because it
14 -- it's better for the product and it's
15 better for the equipment.

16 Q. Do you know what the oven temperature
17 range is now?

18 A. I don't know, but I certainly could
19 find out. And I think if you look
20 through Phil Weiner's sheets, I think
21 there will be some references to
22 telling me that and Jim that we need to
23 slow down and lower the temperatures.

24 Q. But as you sit here you don't know what
25 those temperatures are?

1 A. No, sir.

2 Q. What those ranges are?

3 A. No, sir, I don't. And the product that

4 was -- I know they're lower than the

5 600.

6 Q. In February through May of 1997 the

7 product that we discussed at length

8 when Mr. Castro was asking you

9 questions, do you recall whether or not

10 that product was prepared using

11 temperature range from approximately

12 600 to 670 degrees Fahrenheit?

13 A. Yeah. I would assume, but I also think

14 that you can refer back to 53 and, you

15 know, you will see a whole range of

16 temperatures. If you turn to the very

17 last page, you'll see zone one was at

18 570 and the other two were at 670, so

19 there, for example, is one where it was

20 lower than the 600, so that product was

21 basically run at temperature settings

22 of 570, 670, and 670, so.... Here's

23 one in the middle at 550 on the third

24 zone. Here's one with 550 on the third

25 zone.

1 Q. Because you've already elaborated
2 beforehand what your knowledge areas
3 are.
4 A. Yeah. Competency is such a big thing
5 with me. There's a part of me that
6 says I need to answer this question,
7 and I'm afraid that I'm going to give
8 you some wrong data just from the
9 standpoint I'm not understanding it and
10 want to answer your questions.
11 Q. Well, let me ask a general question.
12 Do you know what the temperature at the
13 core of the product was before or after
14 the product entered the Unitherm oven?
15 A. No.
16 Q. Is there someone at Hudson Foods who
17 would know?
18 A. Yes.
19 Q. And who is that?
20 A. Robert Brooks.
21 Q. Did Unitherm inform you that they had
22 sold the rapid flow oven to anyone else?
23 A. There was always some question in my
24 mind whether or not Carolina Turkey had
25 one before we did or whether we had one

1 Q. Did you ever sign an agreement saying
2 that you would keep any information you
3 received from Unitherm as secret or
4 confidential?
5 A. Me personally? I don't think I or
6 anyone else in my organization did, but
7 I could be wrong on that.
8 Q. Well, as part of the documents that
9 were produced there was no confidential
10 agreement.
11 A. I'm not aware of any confidential
12 agreement between the two parties.
13 BY MR. HANOR: In writing?
14 BY MR. KROLL: In writing.
15 A. In writing.
16 Q. (By Mr. Kroll) Did you have any oral
17 agreement with Unitherm that you would
18 keep any information you received from
19 Unitherm secret or confidential?
20 A. A lot of things were said the day we
21 signed the P.O. from me to David that
22 you would say to anyone relative to,
23 you know, buying a piece of equipment.
24 And I'm sure what I said to David was,
25 "It better work and you better not go

1 run and tell somebody what I'm doing,"
2 because that's usually how I do things.
3 Q. So you were --
4 A. Now does that constitute an agreement?
5 Q. Well, I'm not going to characterize it
6 one way or the other.
7 A. This may be my wife.
8 BY MR. HANOR: Let's take
9 a quick break.
10 (Off the record)
11 (Back on the record)
12 Q. (By Mr. Kroll) We were talking about
13 the day that you signed the agreement
14 or signed the purchase order to
15 purchase the Unitherm rapid flow oven
16 and some other products manufactured by
17 Unitherm. And you said that you told
18 David that it better work and he better
19 not tell anyone what you were doing, is
20 that correct?
21 A. Under normal circumstances with a
22 vendor or somebody that I'm getting
23 into an agreement with, I typically
24 will say something to that effect, and
25 I would not think that it would be any

1 different with David. What exactly
2 happened in 1996 on that particular
3 date --

4 Q. But it's your custom and practice that
5 you would say something like that?

6 A. I would want to get my issues up front
7 and make him very aware of what my
8 expectations were.

9 Q. So is it fair to say that your
10 expectations were that he was not to
11 disclose any information he learned
12 from you?

13 A. I would say that's true.

14 Q. Did you have an equal understanding
15 that you were not supposed to disclose
16 any information you received from him?

17 A. I don't recall that, but if he would
18 have said that I would have given him
19 the same, you know, as -- part of
20 meeting David and doing that at the
21 P.O. time was establish the honorable
22 intentions of getting this done.

23 Q. But you don't recall any conversation
24 about keeping confidential or secret
25 information which you had obtained from

1 the fire suppression system kept going
2 on because we were taking so much
3 juice. So the actual engineering of it
4 wasn't -- what we did was my guys went
5 in here and fixed it, put in higher,
6 you know -- you know, bigger chain
7 drive system, you know, took the tubes
8 out and increased the juice on the
9 electrical and all these types of
10 things. And basically what I was
11 saying to David is here's my cost.
12 Q. For fixing them?
13 A. Yeah. And in the case of the
14 impingement chiller, I basically was
15 flat telling him that it's not an
16 impingement chiller. You know, by
17 definition an impingement chiller has
18 to have some sort of air velocity at
19 certain speeds, and this design was,
20 you know, not even close. But, you
21 know, also at that point in time I also
22 had spent 750, 800 thousand dollars
23 and, you know.....
24 Q. Well, let's go through each of the
25 items --

1 any kind of -- you know, that he tried
2 to do something, you know, that was not
3 right, that when he represented it that
4 he truly felt that it would do what it
5 would do. I just don't think that he
6 really knew, and my problem was you --
7 I mean, if I say I'm going to do
8 something and I make a mistake, and
9 that was like the day of the P.O., "You
10 are going to stand behind what you sell
11 me because I'm going to buy it, and
12 you're going to give me 100 percent
13 satisfaction, are you not?" And he
14 believed that he was. And when we got
15 to the end, I don't think that it was
16 and he made a mistake, and I knew it
17 and he knew it and I knew that he
18 couldn't fix it, and I let him off the
19 hook. I could have, you know, but I
20 think that we going in knew that there
21 were a lot of things that were unknown
22 and, like I said, I was -- I was
23 satisfied to the degree that I didn't
24 think it was worth it to go after that
25 extra and put the screws to him.

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238

PTO-003307